

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Petitions for Reconsideration and Order Directing
Processing of Puerto Rico Department of
Education Funding Requests Under the Schools
and Libraries Universal Service Support
Mechanism for Funding Years 2001 and 2002 by
Data Research Corporation
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-268412, 268414
CC Docket No. 02-6

ORDER

Adopted: July 7, 2010

Released: July 7, 2010

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order we grant a petition filed by Data Research Corporation (DRC) requesting that the Commission direct the Universal Service Administrative Company (USAC) to process certain funding requests under the E-rate program (more formally known as the schools and libraries universal service support program) for funding year 2001. We also grant DRC's request to withdraw its petition for reconsideration of a Commission order. In both instances, DRC's petitions refer to the Commission's Puerto Rico Order, which directed USAC to not process E-rate funding requests involving DRC for any services provided to the Puerto Rico Department of Education (PRDOE) in funding years 2001 and 2002. For the reasons set forth below, we grant the petition to direct USAC to begin

1 See Amended Petition of Data Research Corporation for Order Directing Universal Service Administration Company to Process Puerto Rico Department of Education's Funding Request for Services Provided by Data Research Corporation Under the Schools and Libraries Universal Service Support Mechanism for Year 2001 and to Withdraw the Petition for Reconsideration Filed in 2003, CC Docket No. 02-6 (filed June 14, 2010) (Amended Petition); see also Petition of Data Research Corporation for Order Directing Universal Service Administration Company to Process Puerto Rico Department of Education's Funding Request for Services Provided by Data Research Corporation Under the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002, CC Docket No. 02-6 (filed Aug. 14, 2006) (Petition).

2 See Amended Petition at 1; Petition for Reconsideration and Request for a Hearing to Present Evidence, CC Docket No. 02-6 (filed Dec. 29, 2003) (Petition for Reconsideration); Memorandum Submitted in Support of Petition for Reconsideration and Request for Hearing to Present Evidence, CC Docket No. 02-6 (filed Dec. 30, 2003) (Memorandum).

3 See Federal-State Joint Board on Universal Service, Petition of the Puerto Rico Department of Education to Release Funds Associated with the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002, CC Docket No. 02-6, Order, 18 FCC Red 25417 (2003) (Puerto Rico Order).

processing the relevant funding requests, and grant the request to withdraw the petition for reconsideration.

II. BACKGROUND

A. E-rate Program Rules and Requirements

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁴ To ensure that applicants are able to use the discounted services effectively, and thereby minimize waste, the Commission's rules require applicants to certify that they will have access to the necessary resources to finance both the non-discounted portion of the price of eligible services and the facilities or services their technology plans indicate are required to effectively use the discounted services.⁵ Support for eligible services is conditioned upon the applicant securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to effectively use the services purchased.⁶

3. Under Commission oversight, USAC takes action to prevent waste, fraud, and abuse in the E-rate program.⁷ As part of its ongoing activities to protect against waste, fraud and abuse, USAC defers action on funding commitments for any funding request when it is aware of an active law enforcement investigation directly related to that funding request.⁸

B. DRC Petitions

4. DRC provided Internet access, internal connections, and equipment to the Puerto Rico Department of Education (PRDOE) during funding years 1998 through 2001.⁹ An USAC audit of funding year 1998 found that PRDOE lacked any computers in the classrooms visited,¹⁰ which was a violation of the Commission's rules requiring applicants to have the necessary resources to utilize E-rate services.¹¹ Subsequently, USAC suspended payments to PRDOE for funding years 1998, 1999 and 2000

⁴ 47 C.F.R. §§ 54.501-54.503.

⁵ See 47 C.F.R. § 54.504(b)(2)(vi), (c)(1)(iii); see also 47 C.F.R. § 54.508(a).

⁶ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15830-31, paras. 65-66 (2004) (*Fifth Report and Order*).

⁷ See, e.g., 47 C.F.R. § 54.702(g) (requiring USAC to file annually information regarding "administrative action intended to prevent waste, fraud, and abuse"); *Puerto Rico Order*, 18 FCC Rcd at 25422, para. 15 (stating that, to guard against waste, fraud, and abuse, it is reasonable for USAC generally to defer action on applications upon receiving evidence of potential program violations); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 9202, 9224, para. 65 (2003) (discussing generally USAC's authority to combat waste, fraud, and abuse); *Request for Review of a Decision of the Universal Service Administrator by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, SLD No. 105791, Order, 15 FCC Rcd. 423, 428, para. 9 (2000) (discussing the Commission's mandate that USAC take steps to prevent waste, fraud, and abuse in the E-rate program).

⁸ See USAC website, Principles for Treating Entities Under Investigation, <http://www.usac.org/sl/tools/reference/principles-for-treating-entities.aspx> (last visited July 7, 2010) (USAC Principles for Treating Entities Under Investigation).

⁹ See Memorandum at 6-7.

¹⁰ *Puerto Rico Order*, 18 FCC Rcd at 25419, para. 7

¹¹ See 47 C.F.R. § 54.504 (b)(2)(vi), (c)(1)(iii); see also 47 C.F.R. § 54.508(a).

and suspended consideration of PRDOE's pending applications for funding years 2001 and 2002.¹² On November 25, 2003, the Commission released the *Puerto Rico Order* which, in relevant part, directed USAC to engage an independent auditor to examine the compliance of the PRDOE with E-rate rules for funding years 2001 and 2002 prior to processing PRDOE's applications for those years.¹³ The *Puerto Rico Order* further directed that USAC not process any funding requests involving DRC for services rendered during funding years 2001 and 2002, noting that the Puerto Rico Department of Justice was investigating DRC at that time.¹⁴

5. In December 2003, DRC filed a petition for reconsideration and a supporting memorandum requesting that the Commission reconsider the *Puerto Rico Order* and permit DRC to present evidence in a hearing.¹⁵ In August 2006, DRC filed a petition requesting that the Commission direct USAC to begin processing PRDOE's funding requests related to DRC's provision of service for funding years 2001 and 2002.¹⁶ DRC stated that because the Puerto Rico Department of Justice and the United States Department of Justice had no pending investigations of DRC, it was no longer appropriate for USAC to defer action on the funding requests involving DRC.¹⁷ In June 2010, DRC filed an amended petition withdrawing the 2003 petition for reconsideration and withdrawing requests regarding funding year 2002 because DRC had no relevant funding requests for that year.¹⁸

III. DISCUSSION

6. We grant DRC's petition and direct USAC to resume processing of PRDOE's funding requests involving DRC for funding year 2001. Based on the record before us, we are not aware of any pending Department of Justice investigations of DRC. On July 7, 2005, the U.S. Department of Justice stated that "we have concluded our investigation" of DRC.¹⁹ On March 28, 2006, the Puerto Rico Department of Justice stated that "there were no pending investigations of Data Research Corporation ('DRC') by the Department of Justice of the Commonwealth of Puerto Rico related to DRC's involvement with the E-rate Program."²⁰ Because there are no pending Department of Justice investigations of DRC, there is no reason for the funding requests at issue to remain on hold. USAC should resume processing of PRDOE's funding requests involving DRC for funding year 2001 consistent with its normal process, including any procedures to confirm that no violations of the Commission's rules occurred and to ensure that no waste, fraud or abuse of E-rate funds exist. In addition, we grant DRC's request to withdraw its petition for reconsideration.

IV. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant

¹² *Puerto Rico Order*, 18 FCC Rcd at 25419, para. 7.

¹³ *Puerto Rico Order*, 18 FCC Rcd at 25424-26, paras. 20, 23. The audits were completed on July 22, 2004.

¹⁴ *Id.*, 18 FCC Rcd at 25426, para. 24.

¹⁵ See Petition for Reconsideration at 2-3; Memorandum.

¹⁶ See Petition at 1; see also Amended Petition at 1.

¹⁷ See Petition at 2-3; Amended Petition at 3.

¹⁸ See Amended Petition at 1.

¹⁹ See Letter from James J. Kurosad, Trial Attorney, U.S. Department of Justice, Antitrust Division, to John F. Nevares, counsel to DRC (dated July 7, 2005).

²⁰ See Letter from Pedro G. Goyco Amador, Chief Prosecuting Attorney of Puerto Rico, Commonwealth of Puerto Rico Department of Justice, to John F. Nevares, counsel to Data Research Corporation (dated Mar. 28, 2006).

to authority in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Amended Petition for Order Directing Universal Service Administrative Company to Process Puerto Rico Department of Education's Funding Request for Services Provided by Data Research Corporation Under the Schools and Libraries Universal Service Support Mechanism for Years 2001 and 2002 filed by Data Research Corporation IS GRANTED.

8. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority in sections 0.91, 0.291, and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.106, that the Amended Petition's request to withdraw Data Research Corporation's Petition for Reconsideration and Request for a Hearing to Present Evidence filed by Data Research Corporation IS GRANTED.

9. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Universal Service Administrative Company SHALL BEGIN PROCESSING the funding requests at issue, in accordance with its practices for protecting against waste, fraud and abuse, consistent with this order

10. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. §1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau